

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BOX ELDER CREEK BASIN (39E)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Sandy Place LLC

OBJECTOR: Marnee Lolley

**CASE 39E-0035-R-2022**

39E 173363-00

39E 173364-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Sandy Place LLC is the record owner of claims 39E 173363-00 and 39E 173364-00.

2. Claim 39E 173363-00 was decreed with the following DNRC issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD, POINT OF DIVERSION, AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO EXTEND INTO THE NWNWNE SEC 18 TWP 1S RGE 60E CARTER COUNTY.

The first two issue remarks are notice-type issue remarks, since no Objection was filed to claim 39E 173363-00, no further attention is required.

3. Stock claim 39E 173363-00 was decreed with the following place of use:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			E2NENW	18	1S	60E	CARTER

Based on the third issue remark, it appears the place of use should be modified to:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1			NWNWNE	E2NENW	18	1S	60E	CARTER

4. Stock claim 39E 173364-00 was decreed with September 1 to April 1 periods of diversion and periods of use. On July 27, 2020, Marnee L. Lolley filed an Objection to claim 39E 173364-00 indicating the period of diversion and period of use should be year-round:

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.)

Period of Diversion/Period of Use are year-round Jan-1-Dec-31  
Historic use of well is year round.

5. An Order Setting Filing Deadline was issued providing parties the opportunity to address the place of use issue remark and the Objection. The Order set a deadline for the parties to file documentation addressing the place of use issue remark and the Objection. The Order stated that if nothing was filed by the deadline, this Master would conclude Sandy Place LLC agrees the place of use for claim 39E 173363-00 should be modified to:

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNWNE	E2NENW	18	1S	60E	CARTER

and that Sandy Place LLC agrees the period of diversion and period of use for claim 39E 173364-00 should be changed to January 1 to December 31. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

6. On December 6, 2022, Objector Marnee Lolley spoke with this Water Master by telephone call and confirmed the January 1 to December 31 period of diversion and period of use for claim 39E 173364-00 resolves the Objection. Marnee Lolley also confirmed that she is an agent of Sandy Place LLC, and this Water Master explained to her that if nothing were filed by the deadline, a Master's Report would be issued recommending the proposed changes be made; Ms. Lolley agreed with the proposed changes, and nothing was filed by the deadline.

#### CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.
3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by

the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The notice-type issue remarks decreed on claim 39E 173363-00 have served their purpose, no objections were filed, and no further proceedings are required.

#### RECOMMENDATIONS

1. Claim 39E 173363-00 should be modified as shown in Finding of Fact No. 3, and the issue remarks should be removed from the claim.

2. The period of diversion and period of use for claim 39E 173364-00 should be modified to January 1 to December 31, and the Objection should be dismissed as resolved.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Sandy Place LLC  
Marnee Lolley  
15555 W. Prairie Dunes Dr.  
Surprise, AZ 85374

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOXELDER CREEK**  
**BASIN 39E**

**Water Right Number:** 39E 173363-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SANDY PLACE LLC  
15555 W PRAIRIE DUNES DR  
SURPRISE, AZ 85374 2065

**Priority Date:** SEPTEMBER 30, 1970

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** LITTLE RAMME CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNE	18	1S	60E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM **Reservoir Name:** NONE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWNE	18	1S	60E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 10.00 FEET

**Depth:** 7.00 FEET

**Surface Area:** 3.30 ACRES

**Capacity:** 9.24 ACRE-FEET

THE DAM EXTENDS INTO THE NWNWNE , SEC 18 TWP 1S RGE 60E CARTER COUNTY.

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWNE	18	1S	60E	CARTER

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOXELDER CREEK**  
**BASIN 39E**

**Water Right Number:** 39E 173364-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SANDY PLACE LLC  
15555 W PRAIRIE DUNES DR  
SURPRISE, AZ 85374 2065

**Priority Date:** DECEMBER 31, 1940

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 20.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSE	18	1S	60E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSE	18	1S	60E	CARTER